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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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DayNa M. Decker

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EXAMINER

PRICE, CARL D

ART UNIT

PAPER NUMBER

3749

MAIL DATE

DELIVERY MODE

03/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/760,117	Applicant(s) DECKER ET AL.	
	Examiner CARL D. PRICE	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/13/2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 85-123 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 85-123 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>02/29/2008</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 85-123 have been considered but are moot in view of the new ground(s) of rejection.

Original claims 1-84 were cancelled.

New claims 85-123 were added.

Applicant has amended the claims to be of a scope not previously considered. Consistent with applicant's argument that the prior art relied on in the previous office action fail to show, disclose and/or teach certain aspects of applicant's invention now recited in the claims filed on 12/13/2007, applicant has amended the claims to include at least the following:

85. (new) An apparatus comprising:

- a body defining a chamber for carrying a combustible liquid and having an open upper end;
- a sheet wick having a lower end located in the chamber of the body, for contacting the combustible liquid, the sheet wick having an upper end projecting upwardly from the open upper end of the body, the sheet wick is free of material having a high heat conductivity; a removable cover, which engages the open upper end of the body; the removable cover having an opening for the upper end of the sheet wick and a first cover end and a second cover end;
- the removable cover having a first and a second air hole opening, the first and the second air hole openings are oppositely oriented and at the cover ends; and
- the removable cover having a third air hole opening, which is adjacent to and substantially surrounds the opening for the sheet wick.

With regard to new claims 85-99 applicant's representative states the following:

New Claims 85-99:

The applicant believes new Claims 85-99 are patentable over the Examiner's cited prior art because the prior art does not teach the applicant's Claim 85 element: "the removable cover having a first and a second air hole opening, the first and the second air hole openings are oppositely oriented and at the cover ends; and the removable cover having a third air hole opening, which is adjacent to and substantially surrounds the opening for the sheet wick."
(emphasis added).

- 100. (new)** An apparatus comprising:
a body defining a chamber for carrying a combustible liquid and having an open upper end;
first and second plates arranged in a spaced, confronting relationship with lower portions located within the chamber of the body;
the first plate is a planar sheet and has substantially more surface area than the second plate;
the second plate has a first leg and a second leg; the first leg is vertically aligned with respect to the horizontally aligned second leg;
the first plate is joined to the second plate along an outer edge of the first leg of the second plate;
a sheet wick, which has a lower end located in the chamber of the body for contacting the combustible liquid, is sandwiched between the first plate and the first and the second legs of the second plate;
the sheet wick is free of material having a high heat conductivity; and
the sheet wick has an upper end, which projects upwardly from the first plate and the first leg of the second plate.

With regard to new claims **100-112** applicant's representative states the following:

The applicant believes new Claims 100-112 are patentable over the Examiner's cited prior art. The cited prior art does not teach the applicant's Claim 100 element: "the first plate is a planar sheet and has **substantially more surface area than the second plate**; the second plate has a first leg and a second leg; **the first leg is vertically aligned with respect to the horizontally aligned second leg**; **the first plate is joined to the second plate along an outer edge of the first leg of the second plate**." The cited references do not teach a second plate with a first leg and a second leg as stated in Applicant's Claim 100.

- 113. (new)** An apparatus comprising:
a container for containing a combustible liquid; the container having an open upper end; a sheet wick; a support structure connected to the container and adapted to hold the sheet wick upright in the container such that an upper end of the sheet wick extends above a top surface of the combustible liquid in the container;
the container has a floor and the support structure is mounted to and extends up from the floor;
the container includes an outwardly extending ledge about a top perimeter of the container the ledge includes heat and fragrance releasing holes; and
the heat and fragrance releasing holes are oriented substantially perpendicular to the open upper end of the container.

With regard to new claims 113-120 applicant's representative states the following:

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The applicant believes new Claims 113-120 are patentable over the Examiner's cited prior art. The prior art does not teach the applicant's Claim 113 element: "the heat and fragrance releasing holes are oriented substantially perpendicular to the open upper end of the container.

The cited references do not teach perpendicularly oriented ledge air releasing holes as stated in Applicant's Claim 113.

121. (new) An apparatus comprising:

a body defining a chamber for carrying a combustible liquid and having an open upper end;

a fiber material core; a first and a second sheet wick of a solidified material; the first and the second sheet wick surround the fiber material core; the sheet wicks having lower ends, which are located in the chamber of the body for contacting the combustible liquid, and upper ends projecting upwardly from the open upper end of the body,

the sheet wicks are free of material having a high heat conductivity;

a removable cover, which engages the open upper end of the body;

the removable cover having an opening for the upper end of the sheet wick and a first cover end and a second cover end;

the removable cover having a first and a second air hole opening, the first and the second air hole openings are oppositely oriented and at the cover ends; and

the removable cover having a third air hole opening, which is adjacent to and substantially surrounds the opening for the sheet wick.

With regard to new claims 121-123 applicant's representative states the following:

The applicant believes new Claims 121-123 are patentable over the Examiner's cited prior art. The prior art does not teach the applicant's Claim 121 elements: **"the removable cover having a first and a second air hole opening, the first and the second air hole openings are oppositely oriented and at the cover ends; and the removable cover having a third air hole opening, which is adjacent to and substantially surrounds the opening for the sheet wick."**

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims **85-99** and **121-123** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claims 85 and 121 each contain the recitation “the removable cover having a third air hole opening, which is adjacent to and substantially surrounds the opening for the sheet wick” which is subject matter which was not described in the specification.

Claims rejected under 35 U.S.C. 102(b)

Claims **113** is rejected under 35 U.S.C. 102(b) as being anticipated by **US 147386 (GIBSON)**

US 147386 (GIBSON) shows a container for containing a combustible liquid; the container having an open upper end; a sheet wick; a support structure (C) connected to the container and adapted to hold the sheet wick upright in the container such that an upper end of the sheet wick extends above a top surface of the combustible liquid in the container; the container has a floor and the support structure is mounted to and extends up from the floor, via the side wall of container (a); the container includes an upwardly outward extending ledge (b) about a top perimeter of the container the ledge includes heat and fragrance releasing holes (b') oriented substantially perpendicular to the open upper end of the container.

Claims rejected under 35 U.S.C. 102(b)

Claims **100** is rejected under 35 U.S.C. 102(b) as being anticipated by **US 2324753 (Alexiade)** .

US 2324753 (Alexiade) a body defining a chamber for carrying a combustible liquid and having an open upper end; first and second plates (12, 13) arranged in a spaced, confronting relationship with lower portions located within the chamber of the body; the first plate is a planar sheet and has substantially more surface area than the second plate; the second plate has a first leg (17) and a second leg (18); the first leg is vertically aligned with respect to the horizontally aligned second leg; the first plate is joined to the second plate along an outer edge of the first leg

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of the second plate; a sheet wick (8), which has a lower end located in the chamber of the body for contacting the combustible liquid, is sandwiched between the first plate and the first and the second legs of the second plate; the sheet wick is free of material having a high heat conductivity; and the sheet wick has an upper end, which projects upwardly from the first plate and the first leg of the second plate.

With regard to the recitation “free of material having a high heat conductivity”, since the term “high” is a relative term which is otherwise undefined in the claim the lower portion of the wick holder is deemed the structural and functional equivalent to that which is only broadly claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims rejected under 35 U.S.C. 103(a)

Claims **110-112** and **114-120** are rejected under 35 U.S.C. 103(a) as being unpatentable over **US 147386 (GIBSON)**.

In regard to claims **110-112** and **114-120** since the various characteristics of the apparatus, such as, any one dimension of the wick, the shape of the wick, wick color, decorative coatings and designs, etc. would necessarily depend on numerous design concerns such as the type of fuel combusted, the overall size and shape of the container body, the desired rate of

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burning and fuel consumption, etc., to form, shape and/or dimension the wick in the manner set forth in applicant's claims can be viewed as nothing more than merely a matter of choice in design absent the showing of any new or unexpected results produced therefrom over the prior art of record.

In regard to claims **110-112** and **114-120** Official Notice is taken that it is well known to 1) to fuel wick lamps with liquid fuel; to formulate combustible liquid and solid fuels to include fragrances or volatile compounds, so as to form a fragrance releasing apparatus. Therefore in view of that which is well known in the art of combustion devices and for the known purpose, it would have been obvious to a person having ordinary skill in the art to modify the fuel of **US 147386 (GIBSON)** to be of the type including fragrances or volatile compounds, and in the form of either a solid (e.g.- meltable wax) or liquid fuel (e.g. – lamp oil, combustible liquid is mineral oil, paraffin oil, aliphatic hydrocarbon oils, naphthenic hydrocarbon oils, kerosene, alcohols, vegetable oils, surfactants, fatty acids, stearic acids, triglycerides or ethers which are all well known fuel constituents). Furthermore, Official Notice is taken that it is well known to place and/or adapt a snuffer lid to fit on a combustor or lamp body to extinguish wicks when burning. Therefore, in view of that which is well known in the art of combustors, it would have been obvious to a person having ordinary skill in the art to modify **US 147386 (GIBSON)** to include a snuffer, to extinguish wicks when burning. And, Official Notice is taken that it is well known to from wicks from a wide variety of materials according to their known properties (e.g. – wicking ability, heat resistance, durability, etc.), such as solid mineral (e.g. – asbestos), stone, permeable, inorganic, organic wick, woven, fibrous, fiberglass, graphite, polyamide, or polyethylene, etc. Therefore, in view of that which is well known in the art of combustors, it would have been obvious to a person having ordinary skill in the art to **US 147386 (GIBSON)** wick materials of the type recited in applicant's claims. In addition, Official Notice is taken that it is well known to provide combustion wick type containers with legs to provide a cooling air flow to a low surface of the container. Therefore, in view of that which is well known in the art of combustors, it would have been obvious to a person having ordinary skill in the art to modify **US 147386 (GIBSON)** to include such a cooling leg arrangement. Further, Official Notice is taken that it is well known to provide wick supporting containers with a cover with a ledge that includes heat and fragrance releasing holes (see for example holes 21 of **US002775006**). Therefore, in view of

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that which is well known in the art of combustors, it would have been obvious to a person having ordinary skill in the art to modify **US 147386 (GIBSON)** to include openings of the type set forth in applicant's claims.

Conclusion

See the attached USPTO for, 892 for prior art made of record and not relied upon which is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 9:0am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven B. McAllister can be reached on (571) 272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CARL D. PRICE/

Primary Examiner, Art Unit 3749